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BEFORE THE
SURFACE TRANSPORTATION BOARD

BUFFALO & PITTSBURGH RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION -
SOUTH BUFFALO RAILWAY COMPANY

STB FINANCE DOCKET NO. 34563

PETITION FOR EXEMPTION
PURSUANT TO 49 C.F.R. § 1121.4

EXPEDITED HANDLING REQUESTED

Buffalo & Pittsburgh Railroad, Inc. ("BPRR" or "Petitioner"), a class II rail carrier, hereby files with the Surface Transportation Board ("Board") this petition for exemption ("Petition") to lease from its class III affiliate, South Buffalo Railway Company ("SB"), and operate, the Subject Line described below.

STATEMENT OF FACTS

BPRR and SB are railroads wholly owned by Genesee & Wyoming Inc. ("GWI"). BPRR became a common carrier more than 15 years ago, when it acquired railroad assets from CSX Transportation Company.¹ In 2001, GWI acquired the stock of SB from Bethlehem Steel Company.² BPRR has a large yard in Buffalo, NY called Buffalo Creek

¹ See Finance Docket No. 31116, *Buffalo & Pittsburgh Railroad, Inc. -- Exemption of Acquisition and Operation of Rail Line* -- CSX Transportation, Inc. and Buffalo, Rochester and Pittsburgh Railway Company, Oct. 20, 1987.

² See STB Finance Docket No. 34107, *Genesee & Wyoming Inc. -- Control Exemption -- South Buffalo Railway Company*, served Nov. 21, 2001.

yard. SB is a terminal switching operation located primarily in Lackawanna, NY. SB owns a rail line that runs north for approximately two miles from on or near the Buffalo City line up to (but not including) the Control Point Draw Bridge, in the City of Buffalo, Erie County, New York (the "Subject Line"). The Subject Line connects to BPRR near Buffalo Creek yard. SB also owns yard tracks near Buffalo Creek yard, known as "Station C," which are used for interchange and storage of cars. (See, Exhibit A – Map of Subject Line.)

SB and BPRR expect soon to enter into a lease agreement regarding the Subject Line. BPRR will lease the Subject Line from SB for operating and financial reasons. Following the lease transaction, SB will have no property located in the City of Buffalo on which it will have a tax obligation in that jurisdiction. BPRR, on the other hand, conducts rail operations over significant property in Buffalo, to which it will add the Subject Line. Notwithstanding the administrative advantages of making this change, the primary purpose for the transaction is to obtain operating efficiencies. Station C is located adjacent to the BPRR facilities and miles away from SB's main operation. BPRR and SB interchange cars at Station C, and will continue to do so.³ Other than interchange, Station C serves little purpose for SB in its daily operations and is distant from SB's supervisors and support staff. BPRR, because of its proximity, will be able to more fully utilize the space and will have the supervision and support close at hand.

³ In addition to the subject lease transaction, SB and BPRR intend to execute a trackage rights agreement, whereby BPRR will grant SB trackage rights over the Subject Line so that SB can continue to use the line to make its interchange with BPRR and with Norfolk Southern Railway Company and Canadian Pacific Railway. SB will file with the Board for any necessary approval regarding its acquisition of the trackage rights prior to exercising these rights.

There are no shippers that originate or terminate traffic on the Subject Line. The shippers in Buffalo and Lackawanna will be served by the same carriers that currently serve them. No employees of either railroad will lose jobs as a result of this lease.

This transaction does not qualify for the automatic class exemption procedure at 49 CFR § 1150.41 or § 1150.45, because BPRR is a class II carrier; however BPRR will show that it meets the exemption criteria of 45 U.S.C. § 10502, and this Petition should be approved. BPRR and SB would like to consummate the transaction on January 1, 2005, in order to make the transfer effective for the new year and begin to realize the benefits of the change as soon as possible. Therefore, BPRR requests expedited handling of this Petition.

ARGUMENT

I. EXEMPTION CRITERIA SATISFIED.

Authority for acquisition of an additional line by a small railroad may be obtained under Section 10902, which provides that, “[a] Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may acquire or operate an extended or additional rail line under this section only if the Board issues a certificate authorizing such activity under subsection(c).” 45 U.S.C. § 10902(a). Section 10902(c) directs the Board to issue such authority “unless the Board finds that such activities are inconsistent with the public convenience and necessity.” Nothing about this transaction will be inconsistent with the public convenience and necessity.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from the prior approval requirements when the Board finds that: (1) prior approval is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the “RTP”); and (2) either (a) the

transaction is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power. In this case, all three criteria are satisfied.

A. Regulation Is Not Needed to Carry Out the Rail Transportation Policy.

Detailed scrutiny by the Board of Petitioner's lease of two miles of railroad on which no shippers are located and no change in operations is anticipated is not needed to carry out the objectives of the RTP. To the contrary, an exemption from the prior approval requirements here will *promote* several of these objectives. By reducing the cost and delay associated with an application process, and by permitting Petitioner to lease the property, exemption of this transaction will "minimize the need for Federal regulatory control over the rail transportation system...", 49 U.S.C. § 10101(2), "ensure the development and continuation of a sound rail transportation system...to meet the needs of the public...", 49 U.S.C. 10101(4), and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. § 10101(7). Granting an exemption in this case also would expedite handling and resolution of Board proceedings. 49 U.S.C. § 10101(15).

Petitioner's lease of the Subject Line will not result in substantive changes in the competitive balance or the operating relationships that currently exist. BPRR and SB will continue to interchange with each other at Station C, and each will continue to interchange with third-party carriers in the same manner they do now. The only change will be that the work performed at Station C will be integrated into the BPRR's operation. This transaction promotes elements of the RTP, as it presents an opportunity to improve operating efficiencies without foreclosing transportation options to any shippers. See 49 U.S.C. § 10101(9) ("encourage . . . efficient management of railroads"). Requiring a full-blown application in

this proceeding would contravene the goals of the RTP discussed above, while benefiting no one.

B. The Transaction Is Limited In Scope.

One indication that a transaction is of limited scope is where it involves a carrier or carriers operating in a limited geographical area. Here, the Subject Line is just two miles long, all within a single county. Changing the possessory interest in the Subject Line does not permit or deny either carrier access to markets not now served by them. Even if the operations of either carrier were to change as a result of the lease, which they will not, the change would not extend beyond this short distance.

BPRR will add two miles of track to its approximately 650-mile system – an insignificant addition that will adversely affect no one. But for the fact that BPRR's revenues put it into the category of a class II railroad, this transaction would be filed as a notice of exemption. In fact, if the same lease was being made by BPRR to SB, a 7-day notice could be used to obtain an exemption. There is no class exemption for class II railroads using Section 10902, because none has been proposed. But the size of BPRR does nothing to change the limited scope (and the absence of the need for detailed scrutiny) of this two-mile long transaction, involving a line on which no shippers are located.

C. Regulation of the Transaction Is Not Needed to Protect Shippers From Abuse of Market Power.

Because Petitioner's lease of the Subject Line is limited in scope, it is not necessary to consider whether prior review is needed to protect shippers from an abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). *See Indiana Rail Road Company – Petition for Exemption – Acquisition and Operation – Illinois Central Railroad Company – Line Between Sullivan, IN,*

and Browns, IL, 6 I.C.C.2d 1004 (1990). In any event, there is no potential for such abuse here.

In the proposed transaction, a class II railroad will acquire from its class III affiliate a two-mile segment of track used for interchange. No shippers are located on the Subject Line and the lease will cause no material adverse effect on service. Instead, the more likely result of this transaction will be the same, or enhanced, rail service, as BPRR provides more efficient operations at Station C. For these reasons, regulation of the transaction is not needed to protect shippers from an abuse of market power.

II. LABOR PROTECTION.

This transaction is not expected to adversely affect employees of either carrier. SB crews will continue to run over the Subject Line as they have done, and BPRR crews will continue to interchange with SB at Station C. Although activities at Station C will be supervised by BPRR officials and non-operating work such as track maintenance and car inspections will be performed by BPRR employees, no SB employees will lose their jobs as a result of this transfer of the Subject Line.

Even so, on September 29, 2004, BPRR complied with 49 C.F.R. § 1121.4(h) by posting notice of the proposed transaction at all locations where SB employees go on duty, and serving the labor organizations that represent those employees with a copy of the notice. On that same date BPRR certified to the Board that it had done so.⁴ The 60-day period will expire on November 28, 2004.

⁴ At the time BPRR stated that it would be filing a verified notice of exemption at a later date. Because it is a class II railroad, the notice procedures at 49 C.F.R. § 1150, Subpart E are not available; accordingly, BPRR is filing this Petition.

Although it is not anticipated that the transaction will have any adverse impact on the employees of either railroad, BPRR recognizes that the labor protective conditions set forth in 49 U.S.C. § 10902(d) will be imposed on this transaction.

III. NO SIGNIFICANT ENVIRONMENTAL OR HISTORIC IMPACT.

This transaction will not result in changes in carrier operations that exceed the traffic thresholds set forth at 49 C.F.R. §§ 1105.7(e)(4) or (e)(5). Therefore, no environmental documentation is required for this transaction. *See* 49 C.F.R. § 1105.6(c)(2)(i).

Transactions involving the lease of a rail line for continued rail operations are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a), if termination of such operations requires further approval by the Board and there are no plans to dispose of or alter properties under the Board's jurisdiction that are 50 or more years old. *See* 49 C.F.R. § 1105.8(b)(1).

Service on the Subject Line will continue. BPRR has no plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old. Therefore, a historic report is not required for this filing.

IV. EXPEDITED HANDLING.

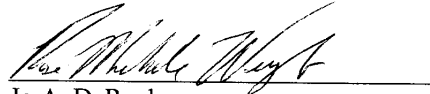
Requests for expedited handling for petitions for exemption have been granted under appropriate circumstances. *See* STB Finance Docket No. 34545, *Genesee & Wyoming, Inc. -- Continuance in Control Exemption -- Tazewell & Peoria Railroad, Inc.*, Sept. 30, 2004; STB Finance Docket No. 34453, *Genesee & Wyoming Inc. -- Control Exemption -- Arkansas, Louisiana & Mississippi Railroad Company and Fordyce & Princeton Railroad Company*, served Feb. 5, 2004. Labor will have had the appropriate 60-day notice of the transaction by November 28, 2004. Petitioner requests that this Petition also be decided, and made effective,

prior to December 31, 2004, in order to begin the new year with the lease in place so that the financial and operating benefits can be realized as soon as possible.

CONCLUSION

For the reasons stated above, Petitioner requests that its Petition to lease and operate a line of SB expeditiously be granted.

Respectfully submitted,



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Dated: November 16, 2004

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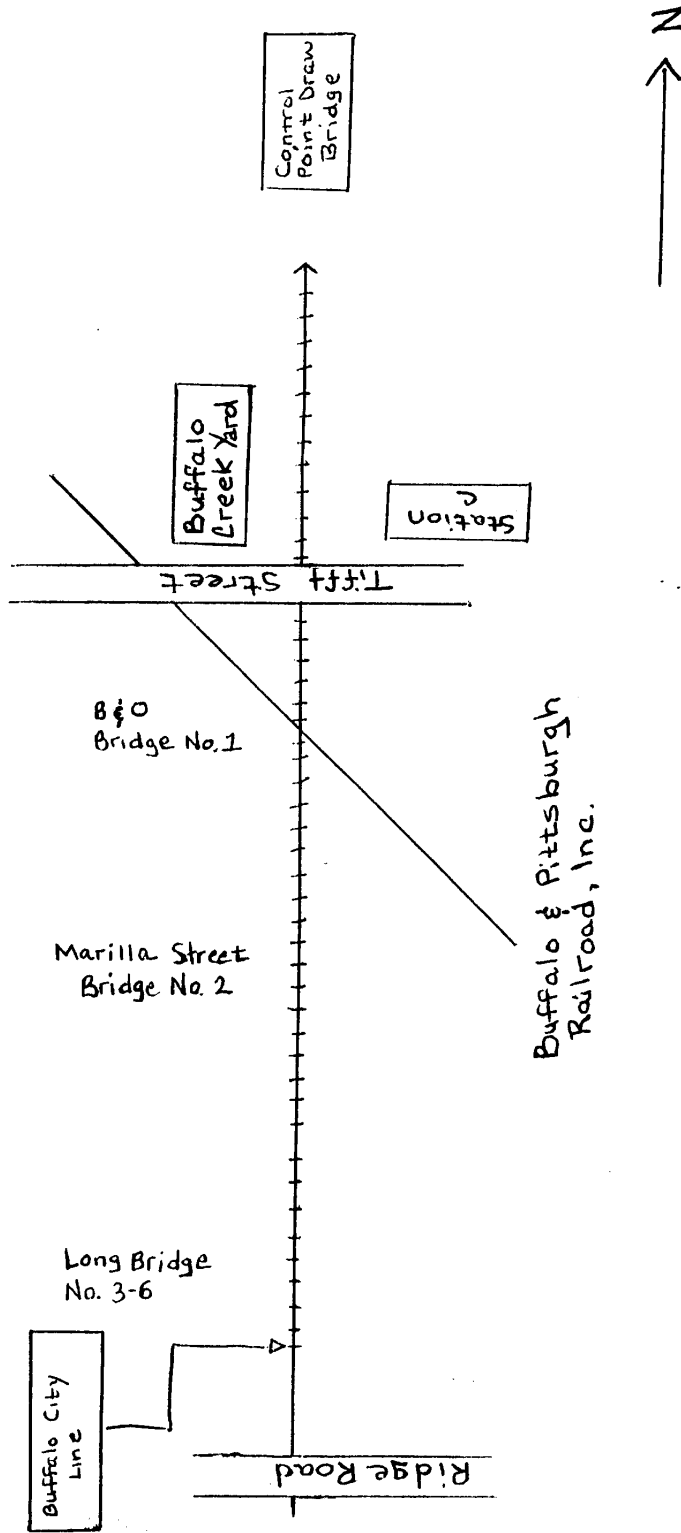
EXHIBIT A

MAP OF SUBJECT LINE

Exhibit A


South Buffalo Railway Company
Buffalo, New York

Subject Line



VERIFICATION

I, David Collins, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to cause the foregoing to be filed.


David Collins
Buffalo & Pittsburgh Railroad, Inc.

Dated: November 16, 2004